IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Iwamura   )   Art Unit: 2419

Serial No.: 10/790,496   )   Examiner: Phunkulh

Filed: March 1, 2004   )   **50T5713.02**

For: **SYSTEM AND METHOD FOR MULTI-LINK**)   May 27, 2010
COMMUNICATION IN HOME NETWORK)   750 B STREET, Suite 3120
)   San Diego, CA 92101

SUPPLEMENTAL REPLY BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This Reply brief responds to the Examiner's Answer dated May 24, 2010, adding a new indefiniteness rejection under 35 U.S.C. 112, second paragraph against Claims 15, 16, 18, and 19. Appellant's rebuttal to the new ground of rejeciton is presented first, and then Appellant's rebuttal to the substantive portions of the Answer are presented.

New Ground of Rejection

The Board remanded the case to invite the examiner to consider whether the means-plus-function limitations of Claims 18-25 are indefinite. Not wishing to let such an invitation go to waste, the examiner duly levied such a rejection despite the following admission on page 4 of the Answer, inaccurate only in its tentativeness: "the following portions of the specification and drawings

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may appear to describe the corresponding structure for performing the claimed function: Fig. 7, Spec. 12 (last paragraph); 13:9-16."

Nevertheless, the examiner immediately leaps to a contradictory conclusion of law, skipping any meaningful analysis.

Because the conclusion of law (approved by the Group Director) is contradicted by the sole finding of fact underpinning it, the rejection merits reversal for being based on insubstantial (and in this case, directly contradictory) evidence.

Although it is not Appellant's job to rebut a rejection that is so plainly legally erroneous, Appellant will, for completeness, now supply the board with a few facts that the examiner did not bother to research or divulge.

On page 4 the present specification clearly states that "the processors described herein may access one or more software or hardware elements to undertake the present logic. The flow charts herein illustrate *the structure* of the logic modules of the present invention as embodied in computer program software. Those skilled in the art will appreciate that the flow charts illustrate the structures of logic elements, such as computer program code elements or electronic logic circuits, that function according to this invention. Manifestly, the invention is practiced in its essential embodiment by a machine component that renders the logic elements in a form that instructs a digital processing apparatus (that is, a computer or microprocessor) to perform a sequence of function steps corresponding to those shown. Internal logic could be as simple as a state machine.

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"In other words, the present logic may be established as a computer program that is executed by a processor within, e.g., *the present microprocessors/servers* as a series of computer-executable instructions."

Thus, the flow charts in the specification are explicitly taught to describe *structure*, contrary to the allegation in Answer.

Furthermore, it appears to be the Technology Center Director's position that the specification "does not disclose an algorithm to determine the bandwidth capability or the occupancy ratio...the specification does not disclose how that current transmitter bandwidth is determined." As for the first finding of fact, it is clearly erroneous, see page 12, lines 18 and 19, giving a formula for determining occupancy ratio. As for the second finding of fact, "bandwidth" is a common term of art that skilled artisans, if not Technology Center Directors, recognize to mean simply data throughput as a function of time, typically expressed in data elements per second and routinely measured by most computing devices, see, e.g., www.dictionary.com which gives several definitions of the term that say just that. The present application requires use of "current transmitter bandwidth" which plainly means the number of data elements per second the transmitter currently is sending. There being no need to explain to the skilled artisan that an apple is red, the conclusion of law that no algorithm supports the recited means-plus-function limitations is clear error, *Spectra-Physics Inc. v. Coherent Inc.*, 827 F.2d 1524, 1529 (Fed. Cir. 1987) ("a patent need not teach, and preferably omits, what is well known in the art"); *Space Systems/Loral Inc. v. Lockheed Martin Corp.*, 405 F.3d 985, 986 (Fed. Cir. 2005) (written description need not include information available to the experienced public).

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Art-Related Rejections

The Answer beginning on page 12 alleges that a wired or wireless path is selected in Falvo "by default", while openly admitting that "Falvo fails to explicitly disclose each display device is connected to WLAN 330 via both wireless connection and wired connection at any time *or the server determining which path to use for communication based one (sic) of the bandwidth capability and the occupancy ratio. Nevertheless, the reference and the ground for rejection remain intact"* (bottom of page 12 of Answer) (emphasis mine). Thus, the conferees concede that as to Claim 1, of the three path selection criteria (component preference, a bandwidth capability, an occupancy ratio) the latter two are patentably distinct, with the issue thus boiling down to whether the first criterion (component preference) is suggested in Falvo.

The conferees insist that it is "by default". But it is not, by default or otherwise. In paragraph 61 Falvo comes closer than elsewhere to resolving the mystery, discussing a human message originator: "[t]he *message originator* also sets up a plurality of message transmission parameters", lines 7 and 8 (emphasis mine), including intended message destination devices. One of those devices is a STB (line 10), disclosed in earlier paragraph 49, line 8 as communicating over a wired path. Another destination device mentioned in paragraph 61 is a wireless display device (line 11), disclosed earlier in paragraph 49 as communicating over a wirelesss path.

Accordingly, unlike Claim 1 in which (1) a server and/or (2) a component determines which path to use for communication based on *component* preference, at most Falvo appears to suggest that a *human* sets up message transmission parameters apparently to suit the communication path selected by *the human*, although Falvo does not even say this much. Regardless, because the rejections are based on a clearly erroneous

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misunderstanding that Falvo "by default" suggests a *server or component* selecting a path based on a *component* preference, neither of which is true, the rejections constitute clear reversible error.

A second error manifest in the Answer is the allegation on page 13 that devices 320 and 325 are connected to the WLAN bridge 330 via both a wired and a wireless link "since they are in close proximity to the WLAN bridge 330 and the devices 320 and 325 are capable of wireless connection." This syllogism, which boils down to "since the devices can communicate wirelessly, and they are close enough to the WLAN bridge to do so, then they communicate wirelessly" is false because the minor premise is false. Simply being close enough to a wireless portal means nothing about whether communication is established with that portal, because a host of other configuration and communication parameters must also be enabled. Because the Answer is clearly erroneous in its technical reasoning on this point, it merits reversal.

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